

§ 748.2

or licensing decision only through the review of a properly completed application supported by all relevant facts and required documentation submitted in writing or electronically to BXA.

(c) *Confidentiality.* Consistent with section 12(c) of the Export Administration Act, as amended, information obtained for the purposes of considering license applications, and other information obtained by the U.S. Department of Commerce concerning license applications, will not be made available to the public without the approval of the Secretary of Commerce.

§ 748.2 Obtaining forms; mailing addresses.

(a) You may obtain the forms required by the EAR from any U.S. Department of Commerce District Office; or in person or by telephone or facsimile from the following BXA offices:

Export Counseling Division

U.S. Department of Commerce, 14th Street and Pennsylvania Ave., N.W., Room H1099D, Washington, D.C. 20230, Telephone Number: (202) 482-4811, Facsimile Number: (202) 482-3617,

Western Regional Offices:

3300 Irvine Avenue, Ste. 345, Newport Beach, CA 92660, Telephone Number: (714) 660-0144, Facsimile Number: (714) 660-9347,
5201 Great America Pkwy, Ste. 226, Santa Clara, CA 95054, Telephone Number: (408) 748-7450, Facsimile Number: (408) 748-7470

(b) For the convenience of foreign consignees and other foreign parties, certain BXA forms may be obtained at U.S. Embassies and Consulates throughout the world.

(c) All applications should be mailed to the following address, unless otherwise specified: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044. If you wish to submit your application using an overnight courier, use the following address: Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue N.W., Room 2705, Washington, D.C. 20044, Attn: "Application Enclosed". BXA will not accept applications sent C.O.D.

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§ 748.3 Classification and Advisory Opinions.

(a) *Introduction.* In light of your responsibility to classify your item, you may ask BXA to provide you with the correct Export Control Classification Number (ECCN) to the paragraph (or subparagraph if appropriate). BXA will advise you whether or not your item is subject to the EAR and, if applicable, the appropriate ECCN. This type of request is commonly referred to as a "Classification Request". If requested, for a given end-use, end-user, and/or destination, BXA will advise you whether a license is required, or likely to be granted, for a particular transaction. Note that these responses do not bind BXA to issuing a license in the future. This type of request, along with requests for guidance regarding other interpretations of the EAR are commonly referred to as "Advisory Opinions".

(b) *Classification requests.* You must submit your Classification Request using Form BXA-748P or its electronic equivalent. See the instructions contained in Supplement No. 1 to part 748 to complete the Blocks identified for this type of request. Classification Requests must be sent to BXA at one of the addresses listed in § 748.2(c) of this part or submitted electronically. Be certain that your request is complete and does not omit any essential information.

(1) Each Classification Request must be limited to six items. Exceptions may be granted by BXA on a case-by-case basis for several related items if the relationship between the items is satisfactorily substantiated in the request. Classification requests must be supported by any descriptive literature, brochures, precise technical specifications or papers that describe the items in sufficient technical detail to enable classification by BXA.

(2) When submitting a Classification Request, you must complete Blocks 1 through 5, 14, 22 (a), (b), (c), (d), and (i), 24, and 25 on Form BXA-748P. You must provide a recommended classification in Block 22(a) and explain the basis for your recommendation based on the technical parameters specified in the appropriate ECCN in Block 24. If

you are unable to determine a recommended classification for your item, include an explanation in Block 24, identifying the ambiguities or deficiencies that precluded you from making a recommended classification.

(3) Classification requests for a one-time Department of Commerce review of encryption software transferred from the U.S. Munitions List consistent with E.O. 13026 of November 15, 1996 (61 FR 58767) and pursuant to the Presidential Memorandum of that date are required prior to export to determine eligibility for release from EI controls. Refer to Supplement No. 6 to part 742 for instructions on submitting such requests for mass market encryption software. For requests for Key Escrow, Key Recovery, or Recovery encryption products, include the word "Encryption" in Block 24: Additional Information.

(c) *Advisory Opinions.* Advisory Opinions must be submitted in writing to the address listed in § 748.2(c) of the EAR. Both your letter and envelope must be marked "Advisory Opinion."

(1) Your letter must contain the following information if you are requesting guidance regarding interpretations of the EAR:

(i) The name, title, and telephone and facsimile numbers of the person to contact;

(ii) Your complete address comprised of street address, city, state, country, and postal code; and

(2) If you are requesting BXA to determine whether a license is required, or the licensing policy related to a particular end-use, end-user, and/or destination, in addition to the information required in § 748.3(c)(1) you must also include:

(i) All available information on the parties to the transaction and the proposed end-use or end-user;

(ii) The model number for each item, where appropriate;

(iii) The Export Control Classification Number, if known, for each item; and

(iv) Any descriptive literature, brochures, technical specifications or papers that describe the items in suffi-

cient technical detail to enable BXA to verify the correct classification.

[61 FR 12812, Mar. 25, 1996, as amended at 61 FR 68585, Dec. 30, 1996; 62 FR 25461, May 9, 1997]

§ 748.4 Basic guidance related to applying for a license.

(a) *Disclosure and substantiation of facts on license applications.* You, as the applicant, are required to make the complete disclosure of all parties in interest to the transaction so that BXA may decide on the license application with the fullest knowledge of all relevant facts. If the license application is filed for an account other than that of the applicant, the agent, as applicant must disclose the name of the agent's principal. Where there is any doubt as to which of several persons should be named as a party to the license, you must disclose the names of all such persons and the functions to be performed by each in Block 24 on your application or an attachment to your license application.

(b) *Applications for the export of items from the United States.* A license application to export items from the United States may be made only by a person subject to the jurisdiction of the United States who is in fact the exporter, or by the applicant's duly authorized agent. This limitation does not apply to applications for the reexport of items previously exported. An application may be made on behalf of a person not subject to the jurisdiction of the United States by an authorized agent in the United States, who then becomes the applicant.

(c) *Prohibited from applying for a license.* No person convicted of a violation of any statute specified in section 11(h) of the Export Administration Act, as amended, at the discretion of the Secretary of Commerce, may apply for any license for a period up to 10 years from the date of the conviction. See § 766.25 of the EAR.

(d) *Prior action on a shipment.* If you have obtained a license without disclosure of the facts described in this section, the license will be deemed to have been obtained without disclosure of all facts material to the granting of the license and the license so obtained will be deemed void. See part 764 of the